

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen; ) Civ. No. CV03 00385 SOM-LEK  
                                  ) (Copyright)  
Plaintiff,                   )  
vs.                           ) DECLARATION OF TIMOTHY J.  
                                 ) HOGAN; EXHIBITS "1" THROUGH  
                                 ) "3"  
HAWAIIAN EXPRESS SERVICE,) INC., a California corporation; et al. )  
                                 )  
Defendants.                 )  
\_\_\_\_\_ )

DECLARATION OF TIMOTHY J. HOGAN

I, TIMOTHY J. HOGAN, am attorney for the plaintiff in this case and I make this declaration under the penalty of perjury. I am licensed to practice before all the courts of the state of Hawaii. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters herein, I am competent and willing to do so.

1. Attached hereto as Exhibit "1" is a true and correct copy of a cover letter from Lex Smith, Esq. Attorney representing Fleming Companies, Inc., and several C&S related defendants purportedly delivered to chambers on May 17, 2007. In the letter, Mr. Smith purports to be acting on behalf of C&S defendants only.
2. Attached hereto as Exhibit "2" is a true and correct copy of a proposed

judgment that was enclosed with the covers letter Exhibit "1."

3. Attached hereto as Exhibit "3" is a true and correct print out of the 9<sup>th</sup> Circuit Court of Appeals Docket in Appeal No. 07-15447. The appeal related to the proposed judgment was docketed on March 22, 2007 and remains pending.

4. In March 2007, I informed counsel for defendants they Mr. Berry took the position that jurisdiction had passed to the Court of Appeals when the defendants first suggested that the court could still enter a judgment. They took no action after that to seek remand from the Court of Appeals.

Dated, Honolulu, Hawaii May 17, 2007.

/S/Timothy J. Hogan  
TIMOTHY J. HOGAN